

SENATE No. 451

The Commonwealth of Massachusetts

PRESENTED BY:

Marc R. Pacheco

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act providing for the establishment of a comprehensive adaptation management plan in response to climate change.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol and Plymouth</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>

<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>

SENATE No. 451

By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 451) of Marc R. Pacheco, Frank I. Smizik, Stephen Kulik, Chris Walsh and other members of the General Court for legislation to establish a comprehensive adaptation management plan in response to climate change. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2028 OF 2013-2014.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**
—————

An Act providing for the establishment of a comprehensive adaptation management plan in response to climate change.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 21O the
2 following chapter: Chapter 21P.

3 COMPREHENSIVE ADAPTATION MANAGEMENT PLANNING IN RESPONSE
4 TO CLIMATE CHANGE.

5 Section 1. As used in this chapter the following words shall have the following meanings
6 unless the context clearly requires otherwise:

7 “Adaptation”, a response and process of adjustment to actual or expected climate change
8 and its effects that seeks to increase the resiliency and reduce the vulnerability of Massachusetts’

9 built and natural environments and seeks to moderate or avoid harm or exploit beneficial
10 opportunities to reduce the safety and health risks that vulnerable human populations, and
11 resources will encounter due to such change.

12 “Executive office”, the executive office of energy and environmental affairs.

13 “Hazard mitigation”, an effort using nonstructural measures to reduce loss of life and
14 property by lessening the impacts of major storms.

15 “Plan”, the comprehensive adaptation management plan.

16 “Resilience”, the capacity of social, economic, and environmental systems to cope with a
17 hazardous event or trend or disturbance, responding or reorganizing in ways that maintain their
18 essential function, identity, and structure, while also maintaining the capacity for adaptation,
19 learning, and transformation.

20 “Risk assessment”, evaluating and prioritizing known risks and their effects.

21 “Risk management”, making a decision and setting policy based on the knowledge
22 acquired through risk assessment.

23 “Sustainability”, the establishment and maintenance of conditions under which humans
24 and nature can exist in productive harmony and fulfill the social, economic and other
25 requirements of present and future generations in a just and equitable manner, including
26 providing for the long-term viability of the people and economy of the commonwealth and its
27 natural ecosystems, which requires consideration of the risks posed by climate change, the
28 practicality of maintaining a long-term presence in the most vulnerable areas and the need to
29 protect and restore natural ecosystems and their services.

30 “Vulnerability”, the propensity of predisposition to be adversely affected. Vulnerability
31 encompasses a variety of concepts and elements including sensitivity or susceptibility to harm
32 and lack of capacity to cope and adapt.

33 Section 2. (a) Notwithstanding any general or special law to the contrary, the secretary of
34 energy and environmental affairs and the secretary of public safety and security, with appropriate
35 secretariats as determined by the Governor, shall develop, draft and adopt a comprehensive
36 adaptation management action plan.

37 The plan shall be developed under the guidance of an interagency advisory committee
38 and supported by Advisory Commission in section F and technical subcommittees and staff as
39 necessary.

40 Upon the adoption of the comprehensive adaptation management plan, all commonwealth
41 certificates, licenses, permits, authorizations, grants, financial obligations, projects, plans,
42 actions, and approvals for any proposed projects, uses, or activities in and by the commonwealth
43 shall be consistent, to the maximum extent practicable, with the adopted plan.

44 The plan shall be completed no later than two years after the effective date of this act and
45 shall be updated at least five years. The plan, and all updates, shall be filed with clerks of the
46 house of representatives and senate.

47 (b) The plan shall include, but not be limited to: (i) a statement setting forth the
48 commonwealth’s goals, priorities and principles for ensuring effective prioritization for the
49 resiliency, preservation, protection, restoration and enhancement of the commonwealth’s built
50 and natural infrastructure; (ii) a commitment to the adherence of sound management practices
51 which shall take into account the existing natural, built and economic characteristics of the

52 commonwealth's most vulnerable areas and human populations; (iii) data on existing, forecasted
53 and projected impacts including, but not limited to, drought and temperature changes, inland
54 flooding and sea level rise according to the best and latest data, forecasting and models; (iv) a
55 statement on the preparedness and vulnerabilities in the commonwealth's emergency response
56 and infrastructure resiliency including, but not limited to, energy, transportation,
57 communications, health and other systems; and (vii) an assessment of the economic vulnerability
58 in high risk communities to local businesses

59 (c) The plan shall include the following sequential steps: (i) a preliminary report (ii) an
60 inventory and vulnerability assessment of human populations, and the natural and built assets of
61 the commonwealth, subject to the threat of climate change, (iii) a final report.

62 (d) There shall be a Comprehensive Adaptation Management Plan Advisory
63 Commission to assist the secretary of energy and environmental affairs and the secretary of
64 public safety and security in developing the comprehensive adaptation management plan. The
65 commission shall consist of: stakeholders and comprised of representatives with expertise in the
66 following areas: transportation and built infrastructure; commercial, industrial and manufacturing
67 activities; commercial property management and real estate; low income consumers; energy
68 generation and distribution; land conservation; water supply and quality; recreation; ecosystems
69 dynamics; coastal zone and oceans; rivers and wetlands; and local government.

70 (e) The secretary of energy and environmental affairs and the secretary of public safety
71 and security shall convene an interim task force that shall prepare an interim plan concurrently
72 with the management plan. Nothing in the management plan shall prevent the preparation of the
73 interim plan. The task force shall be comprised of representatives with expertise in the following

74 areas: transportation and built infrastructure; commercial, industrial and manufacturing activities;
75 commercial property management and real estate; low income consumers; energy generation and
76 distribution; land conservation; water supply and quality; recreation; ecosystems dynamics;
77 coastal zone and oceans; rivers and wetlands; and local government.

78 The interim plan shall include but is not limited to:

79 (1) supporting existing efforts of state agencies, such as the SmartCoasts program at the
80 Office of Coastal Zone management, BioMap2 at the Department of Fish and Game, and
81 vulnerability studies being conducted by the Department of Public Health and the Department of
82 Transportation.

83 (2) Recommending new actions that could be implemented immediately using existing
84 state agency legal authorities, state resources and funding based upon the following:

85 (a) a compilation and prioritization of strategies and actions, derived from the
86 recommendations included in the climate change adaptation report prepared under section 9 of
87 chapter 298 of the acts of 2008;

88 (b) a compilation and prioritization of recommendations from climate change action
89 plans prepared by regional planning agencies and municipalities,

90 (c) Unilateral actions by the executive branch, including but not limited to: executive
91 orders and policy directives issued by the governor; and policies, regulations and guidance by the
92 Secretary.

93 (3) Recommending new actions that require new state authorities, resources and
94 funding, including but not limited to:

95 (a) identifying new potential sources of revenue.

96 Subsections (1) through (3) shall include but not be limited to: the establishment of goals
97 and outcomes; the identification of existing legal authorities under which actions can take place;
98 designation of lead state agencies and partners; timeframe and potential costs of
99 recommendations; a general estimate of the costs of inaction related to liabilities; and the
100 identification of resources such as public funds and private funds including the identification of
101 opportunities to leverage funds through partnerships between federal-state agencies and public
102 and private entities.

103 (2) a technical advisory committee on the risks associated with climate change
104 including, but not limited to, the risks associated with temperature changes, drought and
105 increased precipitation and coastal and inland flooding.

106 The advisory committee shall be chaired by the secretaries, or their designees, and shall
107 be comprised of representatives with expertise in the following areas: (1) coastal zone and river
108 flooding and erosion; (2) hydrological and hydraulic modeling; (3) natural hazard preparedness
109 and mitigation; (4) sea level and storm surge projections; (5) risk measurement and reduction; (6)
110 emergency management planning; and (7) scenario planning. The advisory committee shall,
111 within 6 months from the effective date of this act complete an preliminary report which shall
112 include:

113 (A) a set of combined sea-level rise and coastal and river storm-surge scenarios;

114 (B) estimates of risk levels of each scenario occurring by 2030, 2050 and 2100;

115 (C) estimates of flood water levels in coastal and flood plain and river front areas under
116 each scenario which shall reflect appropriate local information such as local uplift and
117 subsidence, and coastal erosion rates;

118 (D) estimates based on hydrological and hydraulic modeling of coastal and flood plain
119 and river front flood water levels in each scenario in historically coastal areas now currently
120 protected by dams, including river basins;

121 (E) develop scenario planning and the capability to explore policy options for guiding
122 where to build, what to build and how to strengthen communities in areas of greatest
123 risk; and

124 (F) identify critical buffer areas of coast and forests and flood plains that serve to
125 significantly reduce vulnerability to climate related impacts, to guide priorities for state, regional,
126 and local land protection initiatives.

127 The preliminary report shall serve as the basis for vulnerability assessments which state
128 agencies and public utilities shall develop for their portfolio of assets. For the purposes of this
129 paragraph, “state agencies” shall include all executive agencies including, without limitation, the
130 Massachusetts Department of Transportation, the department of environmental protection, the
131 department of capital asset management and maintenance, the department of conservation and
132 recreation, the department of public utilities, the department of public health, the Massachusetts
133 Emergency Management Agency and independent and quasi-public agencies including, but not
134 limited to, the Massachusetts Bay Transportation Authority, the Massachusetts Water Resources
135 Authority and the Massachusetts Port Authority, and public utilities shall include energy
136 generation and transmission, solid waste, drinking water, wastewater and stormwater and

137 telecommunication utilities serving areas identified in the initial report as subject to material risk
138 of flooding.

139 The vulnerability assessments shall classify the economic losses over time associated
140 with each major asset for each flooding scenario as unacceptable, non-critical or immaterial. For
141 assets exposed to material risk of unacceptable losses, the vulnerability assessment shall include
142 order-of-magnitude cost-estimates for: (i) measures to protect the assets from flooding; (ii)
143 measures to make the assets flood resilient; and (iii) removal and relocation of the assets from
144 flood-exposed coastal and river areas. Estimates shall also be prepared for the economic, social
145 and environmental damages if no adaptation actions are taken. Qualitative benefit-cost
146 discussions of projected social impacts of flood prevention versus flood resilience shall also be
147 included. This shall include consideration of avoided costs associated with guiding new
148 development away from vulnerable locations and maintaining the water-absorbing capacity of
149 the natural forested landscape.

150 The vulnerability assessments shall be submitted to the advisory committee within 12
151 months of the completion of the preliminary report. The advisory committee shall create a final
152 report based on the findings of the preliminary report and vulnerability assessments within 3
153 months of the completion of the vulnerability assessments. The final report shall include but not
154 be limited to: (a) the establishment of goals and outcomes; (b) the identification of existing legal
155 authorities under which actions can take place and recommend new authorities where they do not
156 already exist; (c) designation of lead state agencies and partners; and, (d) prioritization,
157 timeframe and potential costs of recommendations.

158 The secretaries shall, at least 6 months before establishing a comprehensive adaptation
159 management plan pursuant to this section, provide for public access to the draft plan in electronic
160 and printed copy form and shall provide for a public comment period, which shall include at
161 least 5 public hearings across the commonwealth. The secretaries shall publish notice of the
162 hearings in the Environmental Monitor within 30 days of the date of the hearings. A notice of the
163 public hearings shall also be placed, at least once each week for the 5 consecutive weeks
164 preceding the hearings, in newspapers with sufficient circulation to notify the residents of the
165 where the hearings shall be held. The hearings shall be held not sooner than 30 days and not later
166 than 35 days after the notice is published in the Environmental Monitor. The public comment
167 period shall remain open for at least 60 days from the date of the final public hearing. After the
168 close of the public comment period, the secretaries shall issue a final comprehensive adaptation
169 management plan and shall file the plan, together with legislation necessary to implement the
170 plan, if any, by filing the same with the clerks of the house of representatives and senate.

171 a public hearing before issuing the plan. The plan must be issued within 24 months of the
172 effective date of this act and shall file the same with the clerks of the senate and house of
173 representatives.

174 Section 3. The comprehensive adaptation management plan shall be consistent with this
175 section and all other general and special laws. The comprehensive adaptation management plan
176 shall not be construed to supersede existing general or special laws, or to confer rights and
177 remedies in addition to those conferred by existing general or special laws.

178 Section 4. The plan shall encourage and provide guidance to regional planning agencies
179 to proactively address the unavoidable consequences of climate change and provide a process for
180 local and regional climate vulnerability assessment and adaptation strategy development.

181 Section 5. There shall be established and set up on the books of the commonwealth a
182 regional comprehensive adaptation management plan grant program. The program shall provide
183 financial assistance to regional planning agencies for the development and implementation of
184 plans at the regional levels of government. The regional plans shall include, but not be limited to:
185 (i) plans for a step-by-step process for regional climate vulnerability assessment and adaptation
186 strategy development; (ii) a definition of regional impacts by supporting communities
187 conducting climate vulnerability assessments; and (iii) an understanding of regional
188 characteristics, including regional environmental and socioeconomic characteristics.

189 Section 6. Regional grants shall be administered by the executive office. Regional grants
190 shall be designed to reduce community risks and hazards as a result of climate change. Regional
191 grants shall advance regional and local efforts to adapt land use, zoning, infrastructure, policies
192 and programs to reduce the vulnerability of the built and natural environment to changing
193 environmental conditions as a result of climate change. State agencies shall prioritize the
194 protection of identified inland as well as coastal vulnerable locations not yet built upon.

195 Section 7. The executive office may acquire by purchase from willing sellers, land
196 abutting or adjacent to areas subject to the ebb and flow of the tide or on barrier beaches or in
197 velocity zones of flood plain areas, on which structures have been substantially and repeatedly
198 damaged by severe weather, for conservation and recreation purposes.

199 Section 8. Prior to the acquisition of any land under this act, the executive office shall
200 develop a conservation and recreation management plan for any such land after consultation with
201 the city or town in which the land is located. The management plan shall set forth the priority,
202 description and location of lands to be acquired, and any land management agreement reached
203 between said agency and municipality for local responsibility to carry out the development and
204 management of said property. All land acquired pursuant to this chapter shall be deemed to have
205 been acquired for protection of the people in their right to conservation, development, and
206 utilization of natural resources.

207 Section 9. No land shall be acquired under this act until after a public hearing has been
208 held by

209 the executive office in the municipality in which the land is situated to consider the
210 management plan. The mayor and city council in a city or the board of selectmen, planning board
211 and conservation commission, if any, of a town shall be notified of such hearing.

212 Section 10. If the executive office deems it necessary to make appraisals, surveys,
213 soundings, borings, test pits or other related examinations to obtain information to carry out this
214 act, the executive office or its authorized agents or employees may, after due notice by registered
215 mail, enter upon lands, water and premises, not including buildings, to make such appraisals,
216 surveys, soundings, borings, test pits and other related examinations as it may deem necessary or
217 convenient for the purposes of this act and such entry shall not be a trespass. The executive
218 office shall provide reimbursement for any injury or actual damages resulting to the lands,
219 waters and premises caused by any act of its authorized agents or employees and shall, so far as

220 possible, restore the lands to the same condition as prior to making such appraisals, surveys,
221 soundings, borings, test pits or other related examinations.

222 Section 11. The executive office may expend such sums as may be available from any
223 source to carry out section 1, including expenses in connection therewith and the cost of planning
224 therefore and for the development, redevelopment or improvement thereof.

225 Section 12. This act shall be in addition to any other bond authorization, appropriation or
226 authority to acquire land available to any agency of the commonwealth.

227 Section 13. The executive office, acting for and on behalf of the commonwealth, may
228 lease to cities and towns, on a form approved by the attorney general, for not more than 25 years,
229 certain property conveyed to the commonwealth under section 1 or by the federal emergency
230 management agency under 42 USC 4001, section 1362 of Pub. L. 90-448, as amended, for use as
231 conservation and recreation areas. Leases shall be in such form and contain such provisions as
232 the secretary of environmental affairs shall determine, including such terms and conditions
233 which are necessary to comply with laws relative to the protection of barrier beaches. Lands shall
234 be leased upon the express conditions that the land shall be used for conservation and recreation
235 purposes only, that no permanent structures shall be erected and a reversionary clause that
236 requires the lease to be terminated if the leased land is used in violation of this act.

237 Section 14. In consideration for the granting of a lease authorized in section 13, a city or
238 town shall agree to maintain the acquired land as a clean, safe and orderly conservation or
239 recreation area.

240 Section 15. Pursuant to its authority under section 40 of chapter 131 of the General
241 Laws, the commissioner of environmental protection shall, within 180 days of the effective date

242 of this act, promulgate rules regulating the dredging, filing or altering of land subject to coastal
243 storm flowage.